

9200/3763



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|--------------------------------------|---|----------------------------------|
| In re Application of: | § | |
| LYLES, MARK | § | Group Art Unit: 3763 |
| | § | |
| Serial Number: 09/677,962 | § | |
| | § | Examiner: UNKNOWN |
| Filed: 10/03/2000 | § | |
| | § | |
| Title: "POROUS DRUG DELIVERY SYSTEM" | § | Attorney Docket No.: 068351.0110 |

PETITION UNDER 37 C.F.R. § 1.181
REQUESTING WITHDRAWAL OF THE HOLDING OF ABANDONMENT

BOX DAC
Honorable Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Petitioner hereby petitions pursuant to 37 C.F.R. 1.181 for the withdrawal of the holding of abandonment of Application No. 09/677,952. A notice of abandonment under 37 CFR 1.53(f) or (g) was mailed to the applicant on 27 September 2002. The application was allegedly abandoned due to a failure to timely or properly reply to the Notice to File Missing Parts allegedly mailed on 11 December 2000. The applicant, however, never received the aforesaid Notice to File Missing Parts.

The applicant filed Application No. 09/677,962 on 3 October 2000. On 18 December 2000, the applicant received a filing receipt from the United States Patent and Trademark Office ("Patent Office") regarding Application No. 09/677,962. The applicant filed an information disclosure statement ("IDS") on 3 January 2001, and the applicant received a post card acknowledgement referencing the IDS from the Patent Office on 22 January 2001. The

applicant received no further communication from the Patent Office until on 4 October 2002, the applicant received the aforementioned Notice of Abandonment.

The Notice to File Missing Parts that was allegedly mailed on 11 December was never received by the Applicant nor its agents. A search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed is attached as Exhibit 1. See *MPEP* 711.03(c) (citing *Delgar v. Schulyer* 172 U.S.P.Q. 513 (D.D.C. 1971, for the proposition that an adequately supported allegation of non-receipt of an Office action may form the basis to "grant the petition to withdraw the holding of abandonment and remail the Office action").

Accordingly the applicants respectfully request that the Examiner withdraw the holding of abandonment of Application No. 09/677,962. Moreover, the applicants believe that no fees are due. However, should any fees be required for any reason relating to this document, the Commissioner is authorized to deduct the fees from Baker Botts, L.L.P. deposit account No. 02-0383, Order Number 068351.0110.

Respectfully submitted,

BAKER BOTTS L.L.P. (023640)

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October 8, 2002

Country Application

08-Oct-02

File Number: 068351.0110

Country: US **SubCase:**

United States of America

Case Type: DIV Divisional Filing

Application Status: Pending

Application Number: 09/677962

Filing Date: 03-Oct-2000

Patent Number:

Issue Date:

Publication Number:

Publication Date:

Priority Number: 08/087615

Priority Date: 02-Jul-1993

Tax Schedule: SE

Expiration Date:

Annuity Client: ☒

Tax Start Date:

Client Reference:

Claims:

Agent:

Agent Reference Number:

List Of User Actions

| Action(s) Du | Due Date | | Action Taken |
|---|-------------|----------|--------------|
| File Divisional Application | 05-Aug-2000 | Due Date | 03-Oct-2000 |
| Issue Fee paid in parent on July 25, 2000. | | | |
| Filing Receipt Received | 11-Dec-2000 | Due Date | 11-Dec-2000 |
| Information Disclosure Stmtnt | 03-Jan-2001 | Reminder | 03-Jan-2001 |
| Notice of Abandonment | 27-Sep-2002 | Due Date | 04-Oct-2002 |
| Petition to Withdraw | 15-Oct-2002 | Due Date | |
| Petition to Withdraw Holding of Abandonment | | | |

Remarks: This application is a Divisional of U.S. Application No. 09/170,574 filed October 13, 1998 which is a Continuation of U.S. Application No. 08/569,107 filed March 18, 1996 which is a Continuation of U.S. Application No. 08/087,615 filed July 2, 1993 (abandoned).

User ID: YSIMERA

Date Created: 30-May-2000

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